



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 22, 2010

CBCA 1635-RATE

In the Matter of ATLAS VAN LINES, INC.

Alan F. Wohlstetter, Gwynedd, PA; and Stanley I. Goldman, Potomac, MD, appearing for Claimant.

Mary C. Bates, Director, Audits Division, Office of Travel and Transportation Services, Federal Acquisition Service, General Services Administration, Arlington, VA, appearing for General Services Administration.

James E. Hicks, Administrative Law Section, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Washington, DC, appearing for Department of Justice.

KULLBERG, Board Judge.

The matter before this Board was brought by Atlas Van Lines, Inc. (Atlas) under 31 U.S.C. § 3726(i)(1) (2006), which provides that a freight forwarder may request review of an action taken by the Audits Division of the General Services Administration's (GSA's) Office of Travel and Transportation and Services. Atlas contends that GSA took deductions for overcharges beyond the three-year period allowed under 31 U.S.C. § 3726(d) and seeks a refund of those deductions that totaled \$5305.97. GSA contends that its rights as a creditor are not extinguished by the three-year limitations period. Having considered and rejected the same arguments raised previously by GSA in *Union Pacific Railroad*, CBCA 1317-RATE, 10-1 BCA ¶ 34,312 (2009), *motion for reconsideration denied*, 10-1 BCA ¶ 34,435, and *Logistics International, Inc.*, CBCA 1637-RATE (July 2, 2010), the Board finds that GSA

improperly took deductions beyond the three-year limitations period, and those deductions must be refunded.

Background

Atlas received payments at various times during 2003 on five Government Bills of Lading (GBLs). On March 20, 2009, GSA took deductions that totaled \$5305.97 for overcharges on those GBLs. The relevant information including the GBL number, the date of payment, the date of the deduction, and the amount of each deduction is summarized as follows:

| GBL Number | Date Paid | Date of Offset | Amount of Offset |
|---------------|-----------|----------------|------------------|
| NO305688 | 3/6/03 | 3/20/09 | \$2569.32 |
| NO305643 | 2/21/03 | 3/20/09 | \$1375.82 |
| NO285819 | 8/29/03 | 3/20/09 | \$882.75 |
| NO323236 | 8/11/03 | 3/20/09 | \$329.00 |
| NO028552 | 8/11/03 | 3/20/09 | \$149.08 |
| | | Total: | \$5305.97 |

GSA issued settlement certificates with regard to each of the above listed deductions on June 18, 2009. Each settlement certificate had the following language:

The Government has the same right “which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due him.” *United States v. Muns[e]y Trust of Washington*, 332 U.S. 234, 238 (1947). Statutory authority for GSA’s offset procedure based on this right is granted in the Federal Claims Collection Act. The rights under the act are not extinguished by 31 U.S.C. 3726(d)[.] *Burlington Northern v. United States*, 462 F.2d 526, 529 (Ct. Cl. 1972).

Atlas subsequently brought its claim for a refund of all of the amounts offset on July 2, 2009.

Discussion

The parties do not dispute that a period of more than three years passed between the date of payment and the date that a deduction was taken for overpayment for each of the GBLs that are at issue in this matter. Atlas contends that “it is entitled to [a] refund of the amounts offset by GSA because the offsets were made more than three years after the payment date[,] and GSA is time-barred from offsetting [the] alleged overcharges by the three-year statute of limitations, 31 U.S.C. § 3726(d).” Claimant’s Response at 1. GSA contends that “[u]nder 31 U.S.C. § 3716, the Government is authorized to effect administrative offset using common-law precedents separately and distinctly from any limitations in other statutes. This includes 31 U.S.C. § 3726 which clearly limits the narrowly defined ‘deduction action.’” Government’s Response at 5.

Under 31 U.S.C. § 3726, the Administrator of GSA has the authority to conduct audits of payments previously made to freight forwarders and deduct the amount of any overpayment from subsequent payments. That statute, however, also provides that “[n]ot later than 3 three years (excluding time of war) after a bill is paid, the Government may deduct from an amount subsequently due a carrier or freight forwarder an amount paid on the bill that was greater than the rate allowed.” *Id.* § 3726(d). The applicable regulation, 41 CFR 102-118.640(b) (2007), states that “[a] 3-year limitation applies on the deduction of overcharges from amounts due a [transportation service provider] (31 U.S.C. [§] 3726).”

This matter involves the same issue that the Board decided in *Union Pacific Railroad*, in which the Board discussed in detail and rejected GSA’s contention that it has the authority under 31 U.S.C. § 3716, which has a ten-year limitations period, to collect overcharges beyond the three-year limitations period set forth in 31 U.S.C. § 3726(d). Following *Union Pacific Railroad*, this Board stated the following in *Logistics International, Inc.*:

As was the case in *Union Pacific Railroad*, GSA contends in this matter that it has the right to collect overcharges by means of an offset more than three years after payment. This Board recognized in *Union Pacific Railroad* that deducting an overcharge beyond the three-year limitation period is a “nullity.” 10-1 BCA at 169,492 (citing *Trans Country Van Lines, Inc.*, B-188647 (Dec. 28, 1977)). A nullity is “a cause which the opposite party may treat as though it had not taken place, or which has absolutely no legal force or effect.” *Black’s Law Dictionary* 963 (5th ed. 1979). Although GSA attempts to justify deducting overcharges beyond the three-year limitations period under 31 U.S.C. § 3726(d) by calling an overcharge a “debt” and

the deduction an “offset,” GSA’s action is a nullity with no legal force or effect.

Id., slip op. at 5. The same result applies in this matter in that GSA has taken deductions on GBLs beyond the three-year limitations period allowed under 31 U.S.C. § 3726(d), and such deductions are nullities with no legal force or effect. Consequently, GSA must refund those amounts deducted to Atlas.

Decision

The Board finds that GSA improperly deducted overcharges totaling \$5305.97 on five GBLs, and GSA must refund that amount to Atlas.

H. CHUCK KULLBERG
Board Judge